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This discussion on merit pay and career ladders focuses on legal questions about evaluation fairness. If the concern of teachers for fairness is heeded, policymakers must include in enabling legislation for teacher incentive programs procedures designed to minimize the impact of bias for or against particular individuals or particular teaching methods. Existing constitutional and legal requirements for due process, or for hearings, are not adequate, and new law is needed. Teacher incentives may be a good idea, but if they are based on the wrong criteria or poor evaluations, they will backfire. If a commitment to developing and paying for a good system is lacking, these programs should be tabled. Everything depends upon the development of criteria that truly measure good teaching, and a fair and workable evaluation system. (JD)

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INTRODUCTION: THE PROBLEM OF FAIRNESS

The best in any profession deserve recognition, an opportunity for self-fulfillment, freedom to pursue their own ideals and ideas, and rewards that will encourage them to continue striving for the highest quality in their work.

It's not yet clear that merit pay or career ladders for teachers will do any of this. Much depends on how such programs are carried out. A merit system that fails to identify the best will ultimately demoralize teachers and lead - ironically - to diminished performance or resignation. The best usually have talents that can be marketed elsewhere.

Teachers are not welcoming merit pay proposals with open arms. Yet, if you polled these same teachers, you would find them giving themselves high grades. The typical teacher must feel that he or she is a likely candidate for merit pay. So why oppose it? Because the typical teacher doesn't trust the evaluation system. In fact, the 8% of the nation's school districts that tried and dropped merit pay plans did so because of problems with the evaluation component, low teacher morale and administrative difficulties.

Why the distrust in evaluations? There are several reasons. Subjective judgments by supervisors are not always fair. Past experience tells us that some supervisors are biased in a variety of ways. They have favorites. They may harbor race or sex biases. Perhaps to avoid worry about subjectivity, some states are leaning toward standardized tests to identify the meritorious teacher, but the tests on the market today seem to be overlooking some important qualities in good teachers - dedication, patience, love of children, willingness to experiment. Tests also raise their own legal problems. If they disproportionately filter out any group protected by Title VII of the Civil Rights Act of 1964 (providing broad protection to teachers, among others, from employment decisions based upon race, national origin, sex or religion), the tests must be professionally evaluated and found to relate to job performance. The Educational Testing Service (ETS), maker of the widely used National Teacher's Exam (NTE), has not validated its test for any purpose other than initial certification, and recommends against its use for such things as promotions or merit pay. But if merit pay or career ladders for the best test takers aren't good ideas, what should the criteria be?

I observe teachers now and then. I have little doubt about who was best among those I observed. In an inner city classroom, somewhat overcrowded with children who were mostly from low-income families, I saw a teacher hold the attention of her young pupils for over an hour, without any need to issue one word to keep order. Her commanding presence was enough. Every minute was time-on-task. She called on every child in the room. She scolded those with wrong answers or answers that came too slow. Every child who received a reprimand also received a bit of praise later. After an hour, I decided to nominate the teacher for an award, but my efforts were ignored: She had received a citywide teacher award the year before, and it was someone else's turn. (The award was limited to six or seven teachers for the entire district.)

One of the arguments used to defend merit pay programs is that "everyone knows who

the good teachers are." That was true for Mrs. Sutton, but she was one of a handful in a large city school district. Deciding on the top 10% to 20% in a building is a much more difficult matter. As a layperson, I am unable to say who was the next best teacher I've ever observed. It's a close call. The literature on teacher evaluation suggests that most evaluators have similar difficulties.

Close calls are especially vulnerable to bias.

Not every kind of bias is illegal. The law simply cannot deal with every possible injustice. The law is limited to concern for procedures, and what the criteria should not be, rather than what it should be. The law focuses on what policy makers for years have worried about the most: it forbids decisions based on a teacher's race, color, national origin, sex, religion, handicap, or the teacher's exercise of constitutionally protected rights (such a freedom of speech or privacy). Other kinds of bias, such as favoritism for a single method of teaching or a particular teacher, remain mostly beyond the reach of existing law. This is why so much depends upon fairness in the procedures chosen. If the evaluation system is fair, merit pay and career ladders might be more acceptable to teachers.

THE FIRST SAFEGUARD FOR FAIRNESS: FAIR PROCEDURES

State and federal constitutions guarantee due process of law. This has been interpreted to forbid government actions that are arbitrary and capricious. An agency that fails to follow its own rules and regulations would, in the eyes of most courts, be pursuing an arbitrary and capricious path. Absent such gross inconsistencies, proving arbitrariness is difficult, if not impossible, as the courts assume agency action is reasonable if any valid reason can be brought forward.

Beyond this, constitutional guarantees provide little comfort to teachers who are worried about fairness in evaluations. To be sure, due process requires certain procedures before any government agency deprives any individual of his or her liberty or property. It all depends on whether the courts can identify a loss of liberty or property interest. Thus far, in cases dealing with merit pay or career ladders (in postsecondary institutions), courts have not been able to identify the loss of any such interest. This is critical. For example, if courts follow the precedent established in cases dealing with new student competency requirements for graduation, they will require states to notify teachers of incentive programs before they are implemented. But the student competency testing cases are distinguishable: Students facing a new graduation requirement were preparing to graduate under more lenient rules; merit pay or career ladder systems present unexpected new opportunities. Moreover, if new rewards depend on evaluation of abilities expected of teachers all along, it seems likely that courts will accept little or no advance notice. State laws and regulations may also provide for procedural due process, but they typically address only "adverse" personnel actions, not rewards.

Possibly, if a career ladder requires either promotion or dismissal (an "up-or-out" rule), and for some reason officials gave a teacher enough of an expectation of promotion to make the promotion contractual, a full and formal hearing might be required prior to dismissal of the teacher. But experience with decisions to retain or not retain probationary teachers suggests that courts will generally fail to identify any property interest in promotion. Tenured teachers who are already in the system may have some additional rights, but courts have generally found that they do not have a contractural right to tenure, and that statutes setting the tenure requirements can be changed. These teachers would have a right to notice, however — enough to give them time to prepare

for new requirements to keep their jobs.

For most incentive programs, courts will not require a hearing simply to review the decision. Other rights under other laws may be invoked - such as a violation of due process requirements or civil rights laws, and courts would review these claims. The decision on the teacher's ability, however, would not be an issue. Courts prefer to leave judgments about teaching excellence to the professionals.

Given the lack of existing legal guarantees for good procedures, it seems wise to include them in the legislation creating the new incentive program. Teacher organizations and others have made numerous suggestions about procedures, and they should be taken seriously. Some states have elaborate nominating and selection procedures for identifying outstanding teachers — the ones who are in the very top 1% of the profession. Such procedures are time-consuming and expensive, and should probably be reserved for this very special kind of recognition. To pick the recipient of merit pay within a building, efficiency dictates an evaluation by the principal or assistant principal (not both, as they rarely can afford this much time away from other tasks). This increases the chance of personal bias. Using evaluators from another building would, as a practical matter, decrease the number of in-class evaluations. This introduces another kind of bias: A one-shot evaluation may take place on a particularly good or bad day for the teacher being evaluated and thus may produce an accurate assessment of overall performance. In addition, those making the evaluations should be well trained for the task, criteria should be developed in advance and clearly stated, evalutors should measure actual teacher behavior rather than abstract traits (such as "permissive" or "not permissive"), and there probably should be a way to permit a teacher to request a second evaluation by another person. All of this can be costly, especially for merit pay systems. Career ladders typically do not require annual evaluations of all the teachers in the system, and the costs of a good evaluation system are less prohibitive. (Because a step up the career ladder means a permanent pay increase, cost of implementation may be greater, however.)

THE SECOND SAFEGUARD FOR FAIRNESS: CIVIL RIGHTS LAWS

In contrast to the sketchy legal guarantee for fair procedures, there is an intricate set of laws protecting teachers against specific kinds of bias.

State and federal constitutions guarantee "equal protection of the laws," along with other rights, such as the right to free speech or privacy. Civil-rights laws focus on equity. A few states also have "whistle-blower" laws to provide additional protection to government employees who are vulnerable to reprisals because they have exposed weaknesses in policy or administration of their agencies.

State and federal constitutions and statutes overlap; they differ as to the populations protected; activities covered, enforcement mechanisms, remedies authorized, and other details. The table below summarizes the most important of these details. Under any of these laws, merit pay is "legal". In fact, pay increases based on merit have often been used by postsecondary institutions and have withstood general challenge under civil rights laws. That is, discrimination based upon a sound evaluation of a teacher's competence is valid; race or sex discrimination is not. The trick is to distinguish the two, especially when the merit system produces unbalanced results -- rewarding a disproportionate number of white, male teachers, for example.

Different aspects of these laws are discussed below, with particular attention to

requirements for balance. Perhaps the most critical decision policy makers must make, when considering the constitutional and legal requirements for equity in a program, is what to do about race or sex imbalance, if it occurs. Imbalance seems likely to occur in some programs, given past experience. Career ladders, for example, are sufficiently similar to promotions in other institutions to suggest that race or sex imbalance will sometimes occur. Pay inequity seems pervasive in professions where pay differentials are routinely based on evaluation of performance or other subjective factors.

Most civil rights laws forbid only decisions based upon the wrong reasons. In short, the complaining teacher must prove discriminatory intent. But if administrators are well-versed in the law, they will keep their reasons to themselves. Proof of illegal intent is becoming more and more difficult. Perhaps for this reason, a few of the laws discussed below make unintended discrimination — imbalance — actionable under some circumstances.

The Laws: A Quick Review

The U.S. Constitution: Specifically, the Fourteenth Amendment to the U.S. Constitution requires states to provide "equal protection" to all persons. It prohibits any kind of intentional inequity among groups of people. The U.S. Supreme Court, however, has taken a practical approach and will permit differential treatment if there is adequate justification for it. This compensates for the lack of express exceptions in the sweeping language of the Constitution.

The level of justification for treating people differently depends on the kind of classification made among groups of people. Any rational basis will serve to justify many types of classifications, including the selection of excellent teachers over mediocre ones for teacher incentives. On the other hand, differential treatment based on race requires a "compelling" justification. Acceptable sex discrimination requires something in between - it must serve "important" objectives, and a "substantial relation" must exist between the classification and these objectives.

If a fundamental constitutional right is at stake, courts will again require compelling justification. Abusing an incentive program by denying an outstanding teacher a reward because the teacher has publicly expressed a view on a controversial issue would no doubt violate a teacher's fundamental right to free speech, and absent compelling circumstances, would be illegal. The same holds true for a decision influenced by the teacher's private life style, which enjoys constitutional protection under a right to privacy.

In a few cases, a teacher's activities within a classroom may also be protected under the First Amendment. But speech within the classroom is exactly what must be evaluated in a merit system, for it is the essence of teaching. Courts are not inclined to overrule administrative decisions in this area, and they have, for example, upheld dismissals of teachers who focused excessively on one subject to the detriment of the full range of subjects to be taught. On the other hand, one teacher has won a court case, obtaining $81,826 in backpay and $37,700 in attorneys' fees for a wrongful dismissal. She had used role-playing techniques to help students understand events following the Civil War. The exercise stirred strong feelings among students. Evidence showed the decision was not premised on her failure to teach the subject, but on student discomfort in response to role playing and a controversial subject.

The idea of justification under the Constitution is at work here. School officials are

responsible for the education program, so they do have a compelling purpose in requiring teachers to address the curriculum properly, even if it limits their free speech rights.

Race or sex quotas might also meet the constitutional requirement for justification. For example, a state might decide to give a competitive edge to female teachers seeking training in math and science, as an end in itself or a means of providing role models for girls. Such a policy may discriminate against one or two individual male teachers, and so it must meet a high requirement for justification under the Constitution. If in fact there is a need to provide role models, or a serious question about past opportunities for women, such policies are probably justified under the Constitution. Once they serve their purpose and the underlying problem is resolved, they should be discontinued, of course.

Civil Rights Act of 1964, Title VII: Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, national origin, sex, or religion, in both public and private sectors. The statute expressly permits programs based on merit. It contains an exception where race or sex or religion is a bona fide occupational qualification (such as requiring a Black male actor to play the role of Othello). For reasons of modesty, being female is a bona fide qualification for girls' locker room or rest room monitors (and male, for boys) but it is difficult to identify any other assignment where sex should be important in schools. Even where students are tall, strong and unruly, strength, not sex, of a teacher may be relevant.

Interestingly, the U.S. Supreme Court has identified two types of discrimination under Title VII: "disparate treatment" in which individuals are treated differently from others solely because of race, sex, or other protected classifications, and "disparate impact" in which an employment policy has a discriminatory effect on an entire class of people.

The Court requires at least circumstantial evidence of discriminatory intent in cases alleging individual discrimination. In this type of case, a complaining teacher has an initial burden of establishing discrimination by showing that he or she (1) belongs to a protected group; (2) applied and was qualified for an award or promotion or other available benefit; (3) although qualified, was rejected; and that, (4) after rejection, the position or benefit remained open and the employer continued to seek candidates from persons with comparable qualifications. The prima facie case, explained the Court, "creates a presumption that the employer unlawfully discriminated against the employee" by eliminating the most common nondiscriminatory reasons for a rejection. Once the plaintiff gets this far, the employer must come up with a good explanation for its actions. The explanation, which must be legally sufficient to justify a finding in favor of the employer, allows the plaintiff to focus on a narrower target when martialing evidence to show the reasons were nothing but a pretext.

The Court follows a similar, but less demanding formula in disparate impact cases. Statistics showing disparate impact on a protected group constitute prima facie evidence of wrong-doing. Then the employer must prove that the policy is relevant to the requirements of the job. If they are not job-related, Title VII is violated.

In either case, courts will examine the reasons behind the decision. Often circumstances will convince the court that the stated reason is not valid. Decisions made pursuant to defective procedures are questionable. Possibly procedures were sidestepped because of race or sex bias. Likewise, Courts will examine similar decisions by the same employer, to see if they consistently apply the criteria they say they apply. They look at past overt discriminatory practice. The courts will also consider whether less discriminatory, alternative criteria are available.

Statutes such as Title VII fail to allow for discrimination where there is adequate justification, in the way the Constitution does. The Supreme Court has nonetheless allowed quotas in some cases, despite challenges under Title VII. The first case involved a private company's voluntary affirmative action plan (reserving 50% of new openings in training programs for Blacks.) The Court found no violation of Title VII. Influenced by evidence that Blacks had been denied job opportunities in the past, they noted that the plan was designed to overcome these past pratices, and was to remain in effect only until Black employees in skilled positions at the plant were proportional to the number of Blacks in the local work force. This case has been extended to education agencies by lower courts. For example, in 1984, a federal court judge reluctantly upheld an affirmative action plan developed by the Flint, Michigan Board of Education, although it resulted in demotion of a White counselor.

Courts themselves cannot require affirmative action unless it is a necessary remedy for proven violations of the law. This was made clear in a 1984 Supreme Court action disapproving lower court decisions to require a city fire department to lay off Whites first to maintain racial balance during a general reduction in force. Further Supreme Court guidance is needed to determine whether affirmative action should be limited to training programs under Title VII, or whether this kind of reverse discrimination is legal in other contexts.

So what should educators do if they discover mostly white male teachers going up the career ladder? — or receiving merit pay? While Title VII does not outlaw race or sex imbalance in every case, it shifts the burden to the employer to show that its criteria and procedures are valid.

There are four general responses to this dilema:

1. A state (or school district) could forego the program, an unfortunate choice if the program will indeed help to promote teacher excellence.

2. The most simple administrative response would be to use quotas or other systems of preference for underrepresented classes. But this can itself cause legal problems as it may cause discrimination against individual men or whites. Further, Supreme Court precedent thus far has only authorized quotas in training programs. A quota designed to remedy past violations of the law would be the easiest to justify to the courts.

3. A state can tinker with the criteria and aggressively encourage and train minorities and women to compete for incentives or a step on the career ladder, for example. While administratively more complex, this option raises fewer legal problems, if it works.

4. Finally, a state can permit the imbalance and prepare to defend its criteria in court. If the criteria are valid, the imbalance alone will not make the state liable under Title VII.

Testing: Objective, But Are The Criteria Right?

As noted above, tests as a measurement criteria pose some very special problems. They may not measure the right qualities, and they may raise legal problems. The use of tests

is expressly allowed under Title VII, so long as they are "not designed, intended or used" for illegal discriminatory purposes. The Supreme Court has interpreted this language to require professional validation — evaluation of the test to determine that it measures skills and abilities needed for the job - where it disproportionately excludes a protected group. The Education Testing Service (ETS) has not validated and does not recommend the National Teacher's Exam (The NTE) for use in promotions, merit pay or any other inservice decision.

Subject area tests might be useful if kept in the proper perspective. High school teachers competing for merit pay might be screened on the basis of a test of their substantive knowledge in their field, as one of two or three relatively objective screening devices. There is no case law concerning this limited use of tests, but knowledge of course content (for teachers who have specialties) is clearly important, and seem to meet the requirements for job relatedness under Title VII, if the test can be properly designed.

Some school districts are using tests to measure progress of pupils, and using the results as criteria for merit pay decisions. After examining the experience with this method of rewarding teachers, Ronald Berk (1984) has recommended against its use. He found numerous sources of invalidity and measurement error which, working together, made student gain a very unreliable measure of teacher effectiveness. He even recommended against its use to corroborate other evaluative techniques. Robert S. Soar et al. (1983) have come to the same conclusion, and, in addition, point out that pupil testing induces teachers to strive for simpler objectives at the expense of more complex ones.

Other Federal Laws Requiring Equity: The Equal Pay Act of 1963 prohibits discrimination by sex in the payment of wages for work requiring "equal skill, effort, and responsibility, and performed under . . . similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system, (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex . . . ." Under the Equal Pay Act, lower courts have found that affirmative action plans (that result in temporary overpayment of salary to women) are valid where they are part of a good faith effort to correct inequities in a school or university system.

Title VI of the 1964 Civil Rights Act prohibits the use of federal funds in training programs that discriminate racially. The law does not cover discrimination in employment but does apply to training programs. The Supreme Court has said that Title VI prohibits only intentional discrimination. In Regents v. Bakke, the court found that quotas violated Title VI even when used to obtain a better racial balance. However, federal agencies may use their authority to set grant conditions to require racial balance in funded programs, and agency regulations prohibiting racial imbalance in funded program have withstood challenge. Thus, training opportunities offered as an incentive to teachers, if dependent in part on federal funds, must achive racial balance, or the funds may be lost.

Title IX of the Education Act Amendments of 1972 prohibits sex discrimination in federally funded education programs. Like Title VI, it authorizes the withholding of federal funds as a sanction. Unlike Title VI, there are numerous exceptions, including religious and military institutions, traditionally single-sex institutions and beauty contests. The law provides that nothing in its broad prohibition "shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist . . . ." While Title IX is silent on the issue, the Court has held that it covers employment.

Any program of teacher incentives that fails to consider a handicapped teacher has the potential of colliding with Section 504 of the Rehabilitation Act of 1973. This law, also modeled after Title VI, forbids discrimination against the handicapped in federally funded programs. It provides that "no otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . . ." Many of the rules for Titles VI and VII specifically apply by cross reference in the statute, and any procedure that works to disqualify handicapped teachers must be relevant to the legitimate goal of rewarding excellent teachers.

The Age Discrimination in Employment Act protects employees from ages 40 to 70. Interestingly, it is used most heavily by White males. It provides for backpay as a remedy.

CONCLUSION

If the concern of teachers for fairness is heeded, policy makers must include in enabling legislation for teacher incentive programs will include procedures designed to minimize the impact of bias for or against particular individuals or particular teaching methods. Existing constitutional and legal requirements for due process, or for hearings, are not adequate, and new law is needed.

In contrast, laws protecting individuals or groups from discrimination are very detailed, particularly for race and sex discrimination. Regulations under Title VI of the 1964 Civil Rights Act require racial balance. Title VII makes imbalance by sex, race or religion vulnerable, and places a burden on the employer to prove that criteria are relevant to requirements for a merit pay recipient or advancement on a career ladder. If groups protected by Title VII are not fully represented in a new program, prudent administrators will take steps to make sure that they are being recruited. If policy makers feel greater protection is needed, they could include a special training program to help underrepresented classes meet the criteria for the reward. If these efforts also fail, policy makers should consider quotas as a last resort, but should take care to keep them temporary and designed only to remedy past inequities.

The constitutional safeguards for teachers who publicly exercise their first amendment rights seem adequate; or at least, there seems to be no special reason to expand these safeguards to assure the integrity of an incentive program. Protection of teachers for their choices <u>within</u> the classroom is another matter. Academic freedom is not explicit in the Constitution; it is, at best, a derivative right. Some speech within the classroom is protected, but all of it is subject to evaluation. Sometimes individual teacher contracts or union contracts will specify greater protection for academic freedom, but this is rare. Tradition may provide some protection, but this is more true at postsecondary levels than it is for elementary and secondary teachers. Policy makers should consider, therefore, some kind of protection for teachers who wish to experiment in their classes. Trying new things, being willing to take risks, and presenting controversial ideas may be the hallmarks of a master teacher.

To sum up, teacher incentives may be a good idea, but if they are based on the wrong criteria or poor evaluations, they will backfire. If a commitment to developing — and paying for — a good system is lacking, these programs should be tabled. Everything depends upon the development of criteria that truly measure good teaching, and a fair and workable evaluation system.

A MODEST PROPOSAL

Even where evaluation is fair, merit pay and career ladders remain suspect because most proposals overlook some important professional capabilities of teachers. The ability and willingness to innovate may be one of the missing criteria. Indeed, the risk of innovation, which always includes the risk of failing, may lead teachers in a merit pay system to play it safe and avoid anything new. These incentive plans also assume that extrinsic rewards are more important to teachers than intrinsic rewards, despite evidence to the contrary.

One solution would be to include in any incentive program a separate component, in which modest funds are made available to a teacher to fund a teacher's experimental work with his or her class. These funds - call them minigrants - could be awarded on a competitive basis to teachers who present well-designed proposals. The funds would not include a salary increase, but would cover the cost of materials and summer pay, if needed, to fully develop the teacher's concept. A committee of teachers, parents, administrators and others (who would not know the names of teachers submitting proposals) could evaluate the proposals.

A variation might allow only those teachers who successfully make and carry out such proposals to compete for other incentives. Other objective criteria could be included along with this requirement. The identification of meritorious teachers would then be a two-step process. Initial screening through relatively objective measures, and final selection based on broader factors. The successful completion of a minigrant proposal could also logically lead to a position as master teacher, with responsibility for helping other teachers adopt the new and successful techniques, as well as helping them develop their own ideas in the future.

Anonymity eliminates personal bias for or against individuals. The broad based membership of the committee would minimize bias for or against a single teaching method. The minigrant gives teachers an opportunity to pursue intrinsic rewards. It recognizes the professional status of the teacher; it places the initial step at the teacher's initiative; it encourages innovation.

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Table
Federal Prohibitions Against Discrimination
in Public Employment

	Constitution	Title VII	Equal Pay Act	Title VI	Title IX	Section 504
Citation	1st amendment 14th amendment 42 U.S.C. sec. 1983 (1982)	42 U.S.C. sec. 2000e (1982)	29 U.S.C. secs. 206(d)(1) & 216(b) & (c) (1982)	42 U.S.C. sec. 2000d (1982)	20 U.S.C. sec. 1681(a)(3) through (9) (1982)	29 U.S.C. sec. 794 (1982)
What public agencies are obligated not to discriminate?	all public agencies	Public Employers	Public Employers in Commerce	recipients of federal funds	recipients of federal education funds	recipients of federal funds
Discrimination based on what?	Any classification is questionable, but discrimination based on race, or the exercise of fundamental rights require highest levels of justification; sex discrimination also requires high level of justification.	race, sex religion, national origin	sex	race or national origin	sex	handicap
Discrimination in what decisions?	any benefit	any employment benefit	salary	any benefit in training program	any benefit	any benefit
Is unintended imbalance prohibited?	no	yes, in "disparate impact" cases. no, in "disparate treatment" cases	no	no, under statute. yes, under regulations. Backpay is not allowed based only on violation of regulations.	no	no
Is Justification possible?	yes. Higher levels of justification are needed for different classifications.	probably not	probably not	probably not	probably not	probably not
Are there exceptions?	no general exceptions	yes	yes	no, but Title VI covers only employee training	yes	no, as long as individual is "otherwise qualified"
Is there an express exception for merit?	no	yes	yes	no	no	no
Who initiates enforcement action?	individual plaintiffs, in court action in some cases U.S. Attorney General	individuals or EEOC	individuals or Secretary of Labor	funding agency or individuals	funding agency or individuals	funding agency or individuals
What are the sanctions?	equitable relief, damages in case of bad faith	equitable relief, backpay	equitable relief (affecting future pay); backpay liquidated damages equal to backpay	equitable relief; backpay if intent to discriminate exists; withholding of federal funds	equitable relief; withholding of federal funds	equitable relief; damages; backpay; withholding of federal funds